

March 18, 2024

BY ELECTRONIC SUBMISSION

Mr. Christopher J. Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: Protection of Clearing Member Funds Held by Derivatives Clearing Organizations

ForecastEx LLC (“ForecastEx”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC” or the “Commission”) proposed rulemaking on the Protection of Clearing Member Funds Held by Derivatives Clearing Organizations (“DCOs”). ForecastEx is an applicant for DCO registration as well as Designated Contract Market (“DCM”) registration. ForecastEx anticipates that it will be registered by the time any final rules go into effect.

ForecastEx is supportive of the Commission’s proposals to require the segregation of non-customer and clearinghouse funds as well as the proposal to require a daily reconciliation. Both of these proposals should be standard practice for clearinghouses and decrease both risk in financial markets and chances that funds are misused. ForecastEx’s clearing system already segregates non-customer and clearinghouse funds. Additionally, ForecastEx’s reconciliations are performed by an automated program which performs a reconciliation multiple times during ForecastEx’s business hours, far more frequently than the daily requirement the Commission is proposing.

However, the CFTC should provide additional clarification on two aspects of its proposed rules. First, proposed CFTC Regulation 39.15(g)(4)(i) does not seem to contemplate automated reconciliation systems, instead requiring that “Each of the DCO’s calculations and reconciliations would need to be approved by a person who did not prepare the initial calculation or the related reconciliation, and who does not report to the person who prepared them.”¹

Unlike a manual reconciliation process which allows for fraudulent and/or erroneous actions on the part of one or more operators, a properly implemented automated process such as that in use by ForecastEx ensures consistency with respect to data sourcing and computations. In addition, the automated process as implemented by ForecastEx is designed to generate alerts that are disseminated electronically to multiple officers in the event of a computation discrepancy, thereby ensuring that no one individual can manipulate or conceal discrepancies.

Automated reconciliation systems should be considered compliant with the Commission’s proposed rule as long as they require multiple individuals to approve the code used in reconciliations. In ForecastEx’s case, a single individual cannot alter the code governing the automated reconciliation process, as ForecastEx maintains controls which require multiple approvals and quality assurance checks before any changes are pushed to production. This includes review and approval of any proposed code change by ForecastEx’s Change Control Oversight Board (“CCOB”), comprised of the top executive, regulatory, finance, and technology personnel in the organization. As a result, the reconciliation process is reviewed

¹ 89 FR 286-307, 291

and approved by multiple people from different reporting lines. Because the Commission's proposal does not explicitly address these types of systems, ForecastEx requests that the Commission provide guidance on whether this interpretation is correct.

Alternately, the Commission could amend the final rule to specify that an automated reconciliation system satisfies the daily reconciliation requirement. Automated reconciliation can be performed more frequently and accurately than via a manual process. In ForecastEx's case, it would be impractical to perform reconciliations multiple times per day if manual review of all reconciliations were required. The benefit of being about to perform reconciliation at multiple intervals is substantially greater than having a single daily reconciliation that is reviewed manually. ForecastEx anticipates that as technology continues to advance, the Clearing industry will trend towards ever more rapid reconciliation timelines. The Commission should ensure that their final rules are cognizant of these developments.

As a final option, the Commission could issue an exemption from proposed CFTC Regulation 39.15(g)(4)(i) for DCOs that only clear products fully collateralized in cash. The stated purpose of the rule is "to ensure clearing member funds and assets receive the proper treatment in the event of the derivatives clearing organization enters bankruptcy²." However, DCOs that clear only fully collateralized products have no credit risk, which minimizes the risk of default. Reconciliation is especially easy for products fully collateralized in cash, as the funds on hand should always equal the positions cleared. The simplified process at this type of DCO does not require manual approval to properly safeguard customer funds. This exemption would be consistent with existing exemptions from rules regarding margin methodology³, risk management committees⁴, and resource packages in case of member default.⁵

Second, proposed CFTC Regulation 39.15(f)(2) requires a proprietary funds letter to "ensure that a depository holding proprietary funds would know that the funds belong to the DCO's clearing members and cannot be used by the DCO for any other purpose, which will help prevent the misuse of funds by the DCO or an employee of the DCO⁶." A strict reading of the proposed rule suggests that member funds held in a clearing fund would also be subject to this requirement. This would create a conflict for any DCO whose rules allow the use of clearing fund monies for other purposes. For example, ForecastEx's rules allow the DCO to use the clearing fund to cover losses other than those attributable to the depositing member in certain circumstances. ForecastEx Rule 617(a)(4) states that the Clearing Fund may be used for borrowings or pledged as security for loans in order to meet obligations, losses, liquidity needs, or expenses suffered by the Clearinghouse in certain situations. As we do not believe it is the Commission's intent to restrict the use of proprietary funds in a clearing fund for these uses, the Commission should clarify that the requirement of a proprietary funds letter is not applicable to a clearing fund account.

In conclusion, while ForecastEx is supportive of the proposed rule, the final rule can be improved with clarification of proposed rules 39.15(g)(4)(i) and 39.15(f)(2). The Commission should explicitly state in its guidance that an automated reconciliation system that cannot be altered by a single individual is fully compliant with the proposed rule as written. Alternatively, the final rule should be amended to specifically allow for automated systems. The Commission should also clarify that member funds held in

² 89 FR 286, 286

³ 88 FR 53664-53702, 53664

⁴ 88 FR 44675-44694, 44678

⁵ 87 FR 76698-76735, 76699

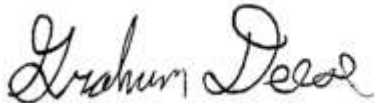
⁶ 89 FR 286-307, 288

a clearing fund are not subject to the requirement of a proprietary funds letter barring use of these funds for any other purpose.

* * *

ForecastEx appreciates the opportunity to comment on the CFTC proposal and is available to provide further input as the Commission may request. If the Commission has any questions or comments regarding this letter, please feel free to contact me through email at gdeese@4castex.com.

Respectfully,

A handwritten signature in cursive script that reads "Graham Deese".

Graham Deese
ForecastEx Chief Regulatory Officer